Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

KATHLEEN RAVEN & TONEY RAVEN, as individual objectors to class action settlement,

Petitioners,

v.

COUNTRYWIDE HOME LOANS, INC., Countrywide Home Loans, Inc. doing business as America's Wholesale Lender & ANNE Y. GONZALES & JULIE TOWER on behalf of themselves and all others similarly situated

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

PETITION FOR A WRIT OF CERTIORARI

Howard Strong,
Counsel of Record,
Strong Law Offices,
Postal Box 570092
Tarzana, CA 91357-0092
(818) 343-4434

QUESTIONS PRESENTED

The Court of Appeal of the State of California refused to consider Petitioners' argument that approval of the class action settlement at issue violated the due process rights of the substantial number of Spanish-speaking class members whose home mortgage accounts were serviced by Respondent Countrywide Home Loans, Inc. ("Countrywide") in Spanish.

The California appellate court believed that, despite extensive briefing of *Devlin v. Scardelletti*, 536 U.S. 1 (2002), as Petitioners were not native Spanish speakers, they had no standing to appeal the due process and Spanish notice issue.

Two questions are presented:

1. Whether the holding in *Devlin v. Scardelletti*, 536 U.S. 1 (2002) is binding on the States and mandates that State Courts permit class members who appear at the final approval hearing and voice objections to appeal on any basis from the order approving the class action settlement?

2. Whether federal Constitutional due process and equal protection rights under the Fourteenth Amendment protect Spanish speaking class members whose mortgage accounts were serviced by Countrywide with monthly statements in Spanish, but who were not given Spanish notice of the class action?

LIST OF PARTIES

The parties below are listed in the caption.

CORPORATE DISCLOSURE STATEMENT

Petitioners Kathleen Raven and Toney Raven are individuals.

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OPINIONS BELOW

The opinion of the Court of Appeal of the State of California, Second Appellate District, Division Three was entered on August 26, 2004 (App. *infra*, 1a-23a) (unpublished). A timely Petition for Review to the Supreme Court of California was denied on November 10, 2004 (App. *infra*, 24a).

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 United States Code § 1257(a).

The judgment of the Court of Appeal of the State of California, Second Appellate District, Division Three was entered on August 26, 2004 (App. *infra*, 1a-23a). A timely Petition for Review to the Supreme Court of California was denied on November 10, 2004 (App. *infra*, 24a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Supremacy Clause of the Constitution of the United States of America

The Supremacy Clause of the Constitution provides in relevant part: "[T]he Laws of the United States * * * shall be the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Constitution of the United States, article VI, cl. 2.

Fourteenth Amendment to the Constitution of the United States of America, Section 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Constitution of the United States of America, 14th Amendment, Section 1

STATEMENT OF THE CASE

This case raises important, recurring questions about the application to State court class actions of this Court's holding in *Devlin v. Scardelletti*, 536 U.S. 1 (2002) that class members objecting to a proposed class action settlement have an absolute right to appeal the trial Court's decision to disregard their objections.

Petitioners, as individual members of the proposed class, objected to the proposed settlement of the class action.

Their objections, included contentions that the English-only class notice was inadequate as to the numerous Spanish speaking class members (over ten thousand Latino borrowers) whose home mortgage accounts were serviced by Defendant Countrywide with, inter alia, monthly statements entirely in Spanish.

The trial court approved the class settlement over Petitioners' objections and Petitioners appealed.

The California appellate court, despite extensive briefing of *Devlin v. Scardelletti*, supra, 536 U.S. 1, refused to consider Petitioners' appeal of the Spanish notice issue because Petitioners did not claim to be Spanish speakers or to have been harmed by the English-only class notice. Thus, the California appellate court held that Petitioners were not "aggrieved" parties as to English-only notice and could not appeal on the Spanish notice issue.

RULE 14(g)(i) STATEMENT

In the trial court, Petitioners argued in their Reply to Countywide's Supplemental Memorandum in Support of Motion for Final Settlement Approval (filed Oct. 2, 2002):

> "Interveners submit that the mailed notice should have been in Spanish to all Countrywide accounts where the monthly statement is in Spanish or where the contract was negotiated in Spanish in order to provide proper and actual notice to those Spanish-speaking class members."
>
> Joint Appendix, Vol. 4, page 918.

The California appellate court noted that Petitioners' contentions included "... the failure to provide notice in Spanish to Spanish-speaking class members violated due process, public policy ... and the equal protection clause." (App. *infra*, 7a see also discussion at App. *infra*, 9a-10a).

Petitioners briefing to the California appellate court included extensive discussion of *Devlin*, and of due process class notice requirements, e.g.:

> "Settling Parties, although they go on at length claiming that Appellants do not have standing and may not raise what they claim are "new" issues on appeal do not discuss, or even mention, *Devlin v. Scardelletti* (2002) 536 U.S. 1, 122 S.Ct. 2005, 153 L.Ed.2d 27 in which the Supreme Court eviscerated earlier law on standing to appeal in class actions and indicated that appealing from an order approving a class

settlement permitted raising what Settling Parties call "new" issues on appeal. Please see full discussion of *Devlin* below starting at Heading.

It is not through lack of knowledge that Settling Parties ignore *Devlin*. *Devlin* was discussed in the proceedings in the Court Below. JA1062."

> from Petitioners Reply Brief in the Calif. Court of Appeal, dated July 7, 2004.

and,

"Here, the settlement approved of by the Court Below, inter alia, is unlawful and repugnant to public policy because Civil Code § 1632 required the notice to be in Spanish as to those class members whose accounts were serviced in Spanish, as did the rule stated by the [U.S.] Supreme Court:

> 'But when notice is a person's due, process which is a **mere gesture is not due process**. **The means employed must be such as one desirous of actually informing the absentee might reasonably adopt** to accomplish it.'
>
> *Mullane, v. Central Hanover Bank* (1950) 339 U.S. 306, 315; 70 S. Ct. 652; 94 L. Ed. 865 (bold added). Accord, *Dusenbury* v. *U.S.* (2002) 534

U.S. 161, 169; 122 S. Ct. 694.'" from Petitioners Reply Brief in California Court of Appeal

REASONS FOR ALLOWANCE OF THE WRIT

The California appellate court erred in not following the applicable holding of this Court in *Devlin v. Scardelletti*, supra, 536 U.S. 1, 14, although other state Courts, including the Texas Supreme Court[1], and the Arkansas Supreme Court[2] have either followed *Devlin* (Texas) or

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[1] The Texas Supreme Court recently followed *Devlin* in overruling the Texas Court of Appeals dismissal of class members' appeal because the class members lacked standing and thus there was no subject matter jurisdiction. *City of San Benito v. Rio Grande Valley Gas Company* (2003, Texas Supreme Ct.) 109 S.W.3d 750, 754. In *City of San Benito* the Texas Supreme Court stating: "We follow the Supreme Court's decision in *Devlin*." *Id.* at 755. And further stating: "We agree with the [U.S. Supreme] Court's analysis [in *Devlin*] that the most important consideration [guaranteeing the right to appeal to nonnamed class members] is whether the appellant is bound by the judgment." *Id.* at 755.

[2] The Arkansas Supreme Court recently held that under that Arkansas law, objectors must timely intervene in a class action to have standing to appeal, distinguishing the Arkansas case from *Devlin*. *Ballard v. Advance America* (2002) 349 Ark. 545, 548; 79 S.W.3d 835; 2002 Ark. LEXIS 402; Cert. Denied *Ballard v. Advance Am.*, 538 U.S. 906, 2003 U.S. LEXIS 1993 (U.S., Mar. 10, 2003). Then, in a

indicated they will reconsider earlier holdings in view of *Devlin* (Arkansas).

Thus, the California appellate court decision at issue in this writ petition is in conflict with the decision of this Court in *Devlin*, as well as the decisions of at least two other State's Supreme Courts

This case come within Supreme Court Rule 10(c) provisions for review on certiorari that a state court has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Here, the California appellate court's ruling conflicts with *Devlin*, supra, 536 U.S. 1.

The rights of nonnamed class members to appeal all aspects of approval of a class action settlement was established by *Devlin*, supra. This Court decided that the nonnamed class member in *Devlin* was to be allowed to appeal that aspect of the trial court's order which affected him—the

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later case, it indicated that *Devlin* had undermined the common-law basis for Arkansas doctrine limiting standing to appeal in class actions and that it would revisit the issues in *Ballard*, supra, once "... the impact of *Devlin v. Scardelletti*, supra, has been thoroughly analyzed." *Butt v. Evans Law Firm* (2003) 351 Ark. 566, 577; 98 S.W.3d 1; 2003 Ark. LEXIS 62 (underlining added).

trial court's decision to disregard his objections. *id.*, at 9, 10[3].

Notwithstanding *Devlin*, the California appellate court refused to consider Petitioners' arguments as to what they contended was required notice in Spanish because Petitioners were said to lack "standing." (App., *infra*, 9a-10a).

The *Devlin* holding is binding on State Courts because it relies on Nineteenth Century precedent, not the Federal Rules of Civil Procedure. *Devlin*, supra, 536 U.S. 1, 7-8.

As scholarly comment on *Devlin* has noted:

> "The Court's concern to protect individuals bound by a judgment, whose interests may be inadequately represented, by conferring on them a right to appeal the outcome of the settlement proceedings, might be understood as rooted in the requirements of due process. **Such an interpretation would render *Devlin's* holding binding on state civil procedure, most notably state class actions.**"
>
> 116 Harvard. Law Review 332 (Nov. 2002) Case Note: Leading

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[3] "What is most important to this case is that nonnamed class members are parties to the proceedings in the sense of being bound by the settlement. It is this feature of class action litigation that **requires that class members be allowed to appeal the approval of a settlement when they have objected at the fairness hearing**."

Devlin v. Scardelletti 536 U.S. 1, 10 (2002) (bold added)

> Cases: II. Federal Jurisdiction and Procedure [*Devlin v. Scardelletti*], fn 45 (bold added).

The California courts erred in not following this Court's holdings in *Devlin v Scardelletti*, 536 U.S. 1 (2002) by refusing to consider Petitioners appeal of the Spanish notice issue and in not protecting the due process and equal protection rights of Spanish-speaking class members to class notice reasonably calculated to inform them.

CONCLUSION

This Court should ensure that its ruling in *Devlin* is complied with by State Courts and that the due process and equal protection rights of Spanish-speaking class members are protected.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Howard Strong,
Counsel of Record,
Strong Law Offices,
Postal Box 570092
Tarzana, CA 91357-0092
(818) 343-4434